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November 19, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

Re: Notice of ex parte meeting regarding CC Docket 98-147

Dear Ms. Salas:

On Wednesday November 18, 1998, Glenn B. Manishin and the undersigned, counsel for Rhythms NetConnections Inc., met with Thomas Power, Legal Assistant to Chairman Kennard to discuss issues relating to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.

The substance of the meeting revolved around a discussion of the economic incentives and ability of incumbent local exchange carriers ("ILECs") to deny digital subscriber line ("DSL") competitors access to necessary network elements, namely unbundled copper loops and access to physical collocation. Attached are two copies of memoranda summarizing Rhythms' positions on these issues.

Sincerely,

Frank V. Paganelli

cc: Thomas Power

enclosures

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RHYTHMS NETCONNECTIONS INC.
KEY ISSUES FOR §706 PROCEEDINGS

RHYTHMS

- One of "Big Three" DSL Providers; Well financed; Top management team
- Inititiated services April 1, 1998; Certified in 19 states; National roll-out

KEY ISSUES

Generally:

(1) Requirements for DSL-based Competition:
- "Clean" copper loops
- Physical Collocation

(2) Proposed Order: Don't water-down

(3) Proposed Separate Affiliate Rule: make **mandatory**

Loops:

(1) Spectrum Compatibility:
- Independent standards setting body
- Interim rule: Presumption of no network interference

(2) Shared or Single Loop Issues:
- No restriction on loop use

(3) Price Squeeze:
- Tie DSL tariffs to UNE prices

(4) Loop Access (OSS, general availability):
- Timely access to loop plant data
- Access to the unbundled copper loops as requested by the CLECs

Collocation:

(1) DLC Vaults:
- First choice: access to alternate copper loops
- Other options technically feasible
  — *e.g.* vault, adjacent, parrallel collocation

(2) Physical Collocation:
- Availability
- Interval
- Price

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WHO IS RHYTHMS

Rhythms is a privately financed comprehensive network solutions company that provides high speed data communications that combine local access through the deployment of xDSL services with capacity balanced local and wide area networks.

Rhythms entered commercial services in San Diego on April 1, 1998 and is currently building it network and rolling out services in California's Bay area as well as Los Angeles and Orange County. Rhythms is currently certified as a local carrier in 19 states, and will be certified in over 25 states within the next six months.

WHAT IS NEEDED FOR DSL-BASED COMPETITION

DSL-based competitors require access to:

(1) "Clean" copper loops unencumbered by load coils or excessive bridge taps; and

(2) Access to both ends of the loop in order to collocate DSL equipment.

KEY ISSUES

Generally:

- The FCC's proposed order in the 706 NPRM would promote competition in advanced services. Deregulation of the ILECs is not needed to promote ubiquity of advanced services deployment. The most significant existing barriers to advanced services deployment are the anticompetitive efforts of the ILECs to deny access to copper loops and physical collocation. For these reasons, the Commission should water-down its proposed rules.

- The FCC's proposed separate affiliate rule should be made **mandatory**. By making all incumbents treat themselves as they treat their competitors, the separate subsidiary rule will expose anticompetitive behavior and penalize the worst offenders. Where an ILEC abuses the separate subsidiary rule and treats its sub better than its competitors, the subsidiary should be considered to be "standing in the shoes" of the incumbent, and therefore subject to the unbundling and resale requirements of Section 251 and 252.

- In addition, specific, enforceable rules requiring the incumbents to provide CLEC access to "clean" copper loops and affordable & timely physical collocation are necessary.

Loops:

(1) Spectrum Compatibility:

- ILECs deny data CLECs access to loop binder groups based on claims that DSL technologies may cause spectral interference with other loops in a binder group. In reality, the worst interfering loops are the T-1 and ISDN lines regularly deployed by the ILECs. In fact, most DSL-equipped loops cannot negatively impact POTs lines, and all are far more impacted by the ILECs' T-1 and ISDN lines than vice versa.

- Competitively neutral spectrum management rules should be established by an independent standards setting body with active participation of CLECs, ILECs and the Commission. In the interim, the Commission should prohibit ILECs from applying unilateral spectrum management policies to block installation of DSL-equipped lines.

(2) Shared or Single Loops Issues:

- ILECs claim that a single loop cannot and should not be shared by more than one provider (*i.e.* one provider for voice, one for data).

- ILECs currently "split" line for themselves on a routine basis – there simply is no technical feasibility issue. Claims of customer confusion also fail: customers have long been able to discern between long distance and local providers coexisting on the same line. (*See also*, Universal WATTs Access Lines Orders). Bottom line: ILECs must be required to allow CLECs to provide either voice or data services, or both, over any line as requested by the consumer.

(3) Price Squeeze:

- The ILECs' national DSL tariffs offer services at prices below the aggregate of the state-set wholesale prices of the UNEs required to provide the service.

- The Commission should not approve any national ILEC DSL tariff that does not reflect the aggregate costs of the UNEs underlying the service. Any other decision produces an anticompetitive price squeeze prohibiting new entrants from joining the DSL market.

(4) Loop Access (OSS, general availability):

- ILECs refuse to provide information regarding the status of their existing loop plant, even though that information is readily available for internal ILEC use (LFACS and other databases). ILECs also routinely deny the availability of simple copper loops based on their own arbitrary definitions of a "DSL-capable loop."

- ILECs should be required to provide timely access to loop plant data, including the LFACS database, and to provide access to the unbundled copper loops required for DSL provisioning, as requested by the CLECs, and not as defined by the ILEC.

Collocation:

(1) *DLC Vaults:*

- ILECs employ Digital Loop Carrier ("DLC") vaults in the field to merge copper lines onto high-speed transport. Where a loop carrier involves non-copper carriage from the vault to the ILEC's CO, the ILECs claim that DSL access is not available.

- ILECs must be required to provide access to ANY alternate copper lines available from a DLC vault to the CO. ILECs routinely rearrange customers from and to copper lines as needed. Most DLC vaults continue to have copper plant capacity back to the CO.

- The Commission should also find that alternative solutions such as adjacent or parallel collocation at or near the DLC vault are technically feasible, and must be made available at the CLEC's request.

(2) *Physical Collocation:*

- The ILECs regularly deny competitors timely and affordable access to physical collocation. ILECs deny that collocation space exists, overcharge for build-out and provision collocation at unacceptable intervals.

- The Commission must set specific, enforceable standards regarding the availability of physical collocation at the CO. ILECs should be required to affirmatively demonstrate the lack of space availability at a CO via tours and blueprints. No non-essential or antiquated equipment should be allowed in CO's where collocation space has been denied.

- The Commission should set specific requirements regarding the interval for collocation build-out. The Commission should consider the best practices of ILECs around the nation as a minimum floor. ILECs should be required to assign sufficient staffing to the collocation request and construction processes.

- National guidelines are required to bring collocation build-out costs into check. The Commission should again review the best practices of incumbents to determine a ceiling for build-out costs. The Commission should consider other similar industries where actual competition currently exists for a "reality check" on current collocation build-out charges.

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